

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

iSun, Inc, *et al.*,¹

Debtors.

Chapter 11

Case No. 24-11144 (TMH)

(Jointly Administered)

RE: 63, 183, 185, 186, **256**

**AMENDED² OBJECTION OF FUSION RENEWABLE NA, LLC, FUSION
RENEWABLE, LLC, ER KENDALL HILL SOLAR, LLC AND ER WAITE CEMETERY
SOLAR, LLC TO ASSUMPTION AND ASSIGNMENT**

Fusion Renewable NA, LLC (“Renewable NA”), Fusion Renewable, LLC (“Renewable”), ER Kendall Hill Solar, LLC (“Kendall Hill”), and ER Waite Cemetery Solar, LLC (“Waite Cemetery,” and together with Renewable NA, Renewable, and Kendall Hill, “Fusion”) hereby object to the alleged \$0 cure amounts related to six unspecified and allegedly executory contracts (collectively, the “Assumed Fusion Contracts”) set forth in the *Amended Notice of Potential Contract Assumption and Assignment* [Dkt. No. 186] (the “Notice”). In support of this objection, Fusion further states as follows:

¹ The Debtors in these Chapter 11 cases, along with the last four (4) digits of their federal tax identification numbers, are: (i) iSun, Inc. (“iSun”) (0172) (ii) Hudson Solar Service, LLC (“Hudson”) (1635); (iii) Hudson Valley Clean Energy, Inc. (“Hudson Valley”) (8214); (iv) iSun Corporate, LLC (“iSun Corporate”) (4391); (v) iSun Energy, LLC (“iSun Energy”) (1676); (vi) iSun Industrial, LLC (“iSun Industrial”) (4333); (vii) iSun Residential, Inc. (“iSun Residential”) (3525); (viii) iSun Utility, LLC (“iSun Utility”) (4411) ; (ix) Liberty Electric, Inc. (“Liberty”) (8485); (x) Peck Electric Co. (“Peck”) (5229); (xi) SolarCommunities , Inc. (“SolarCommunities”) (7316); and (xii) Sun CSA 36, LLC (“Sun CSA”) (7316); (collectively referred to as the “Debtors”). The Debtors’ mailing address is: 400 Avenue D, Suite 10 Williston, Vermont 05495, with copies to Gellert Seitz Busenkell & Brown LLC, Attn: Michael Busenkell, 1201 N. Orange Street, Suite 300, Wilmington, DE 19801.

² The objection has been amended to include a signature with today’s date. The objection otherwise remains unchanged.

FACTUAL BACKGROUND

1. Renewable NA is a Delaware limited liability company. Renewable and iSun Utility, LLC (“Utility”) are members of Renewable NA pursuant to that certain Operating Agreement dated August 7, 2022 (as amended, the “Renewable NA LLC Agreement”).

2. Renewable NA owns Waite Cemetery, which is the owner and developer of a solar energy production project in Shaftsbury, VT (the “Waite Cemetery Project”). Renewable NA acquired the Waite Cemetery Project from the Debtors.

3. Renewable NA owns Kendall Hill, which is the owner and developer of a solar energy production project in Pittsford, VT (the “Kendall Hill Project,” and together with the Waite Cemetery Project, the “Fusion Projects”). Renewable NA acquired the Kendall Hill Project from the Debtors.

4. Pursuant to that certain Engineering, Procurement, and Construction Agreement dated September 30, 2022 (as amended, the “Waite Cemetery EPC Agreement”) between Waite Cemetery and iSun Industrial, LLC (“Industrial”), Industrial serves as the EPC contractor for the Waite Cemetery Project.

5. Pursuant to that certain Engineering, Procurement, and Construction Agreement dated December 31, 2021 (as amended, the “Kendall Hill EPC Agreement”) between Renewable NA and Utility, Utility serves as the EPC contractor for the Kendall Hill Project.

6. Due to certain issues related to the work of Industrial and Utility as the EPC contractors for the Fusion Projects, on April 13 and 14, 2023, Renewable NA entered into letter agreements with Industrial and Utility (the “Letter Agreements,” and together with the Renewable NA LLC Agreement, the Waite Cemetery EPC Agreement, and the Kendall Hill EPC Agreement,

the “Fusion Agreements”). True and correct copies of the Fusion Agreements are attached hereto as **Exhibit A**.

7. On May 1, 2024, Fusion served the Debtors with a notice of default related to the Fusion Agreements (the “Default Notice”). A true and correct copy of the Default Notice is attached hereto as **Exhibit B**.

OBJECTIONS TO ASSUMPTION AND ASSIGNMENT

8. Fusion objects to the proposed assumption and assignment set forth in the Notice for several reasons.

9. First, the Debtors list a total of six allegedly executory agreements in the Notice related to Fusion and/or the Fusion Projects, but the listings fail to sufficiently describe the Assumed Fusion Contracts (each is merely described as “Project Agreement”) or to correctly identify the counterparties. For these reasons, it is impossible for Fusion to reconcile the Assumed Fusion Contracts with the Fusion Agreements with any degree of certainty. Consistent with basic due process, Fusion cannot be reasonably required to state the correct cure amounts for the Assumed Fusion Contracts on an expedited basis under these circumstances. Fusion reserves its right to supplement or amend this objection based on these fundamental deficiencies with the Notice.

10. Second, the cure amount for each Assumed Fusion Contract is asserted as \$0 in the Notice. Subject to the reservation of rights set forth above, Fusion states the following cure amounts for the Fusion Agreements (rather than the Assumed Fusion Contracts, which Fusion cannot identify):

Fusion Agreement	Cure Amount	Description
Waite Cemetery EPC Agreement	\$460,000.00	Fusion paid the Debtors \$460,000.00 and has not received any substantiation that

		these amounts were used to pay subcontractors or equipment vendors, as required by the Waite Cemetery EPC Agreement. After being informed by multiple entities that Debtors had not made required payments, Fusion sent Debtors a notice of default and demanded confirmation that Debtors had applied the \$460,000 towards the project. Debtors provided no substantiation in response that these amounts were used to pay subcontractors or equipment vendors.
Kendall Hill EPC Agreement	\$636,000.00	Fusion paid the Debtors \$460,000.00 and has not received any substantiation that these amounts were used to pay subcontractors or equipment vendors, as required by the Kendall Hill EPC Agreement. After being informed by multiple entities that Debtors had not made required payments, Fusion sent Debtors a notice of default and demanded confirmation that Debtors had applied the \$460,000 towards the project. Debtors provided no substantiation in response that these amounts were used to pay subcontractors or equipment vendors. Additionally, based on certain undisclosed interconnection costs related to the Kendall Hill Project, the Debtors are liable to Fusion for an additional \$176,000.00.
Renewable NA LLC Agreement	\$1,096,000.00	The Debtors' defaults under the Waite Cemetery EPC Agreement and the Kendall Hill EPC Agreement are also defaults under the Renewable NA LLC Agreement.

WHEREFORE, Fusion respectfully requests that the Court hold an evidentiary hearing to determine which Fusion Agreements are Fusion Assumed Contracts and the cure amounts for each.

Dated: July 25, 2024

Respectfully submitted,

/s/ Ericka F. Johnson

Ericka Johnson (DE Bar No. 5024)

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